



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bird-Johnson Company

File: B-265714

Date: September 25, 1995

DECISION

Bird-Johnson Company (BJCo) protests the Department of the Navy's release of its proprietary data in issuing request for proposals (RFP) No. N65540-95-R-0040, issued by the Naval Surface Warfare Center to obtain a quantity of landing craft utility propellers manufactured in accordance with Army Drawing No. 13230E5604, Revision A. BJCo contends that this drawing is proprietary to the firm and argues that the agency issued the solicitation without a restrictive legend on the drawing, although the agency was on notice that the government had only limited rights in the drawing.

We dismiss the protest as untimely because it was filed more than 10 days after the protester knew the basis for its protest.

It is undisputed that BJCo informed the Navy by letter dated June 27, 1995, that the protester had inadvertently failed to mark the drawing as proprietary to the firm and that BJCo expressly denied permission for the release of the drawing outside the government. In response, the agency advised the protester by letter dated June 30 that it had not substantiated its claim that the drawing contained proprietary information and that the Navy intended to issue the instant solicitation without any restrictive legend on the drawing. The protester's July 5 facsimile response reasserted its proprietary claim to the drawing and requested that the agency suspend further procurement action until the Navy obtained verification from the Army that the drawing was proprietary to the firm. On July 6, the Navy issued the solicitation on an unrestricted basis. Thereafter, by letter of July 7, the agency responded to BJCo's July 5 letter again stating that the firm had not substantiated its claim and informed the protester that the solicitation had been issued without any restrictive legend on July 6. This protest was filed on August 11 alleging that the Navy misused its proprietary data by releasing the drawing outside the government.

BJCo's protest is untimely. Our Bid Protest Regulations contain strict rules requiring timely submission of protests. Under these rules, protests not based upon alleged improprieties in a solicitation must be filed no later than 10 working days after the protester knew, or should have known, of the basis of protest, whichever

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is earlier. 4 C.F.R. § 21.2(a)(2) (1995). In this case, BJCo knew that the Navy did not consider its proprietary claim substantiated, and the firm knew that the drawing would be released on an unrestricted basis when it received the agency's June 30 letter. The RFP was issued on July 6 on an unrestricted basis. BJCo had actual knowledge of the Navy's issuance of the RFP, including the use of the unrestricted drawing, at the latest, upon its receipt of the agency's July 7 letter. BJCo's protest of this issue, filed with our Office on August 11, was not filed within 10 working days of when the protester knew, or should have known, its basis of protest; the protest is untimely and will not be considered.¹

The protest is dismissed.



Michael R. Golden
Assistant General Counsel

¹Contrary to the protester's position, BJCo's continued efforts to discuss the matter with the agency after the issuance of the RFP do not toll our timeliness requirements. See Scheduled Airlines Traffic Offices, Inc., B-244852, Oct. 24, 1991, 91-2 CPD ¶ 369. Further, the protester argues that the agency in its dismissal request has improperly revealed certain information such as the number of offerors in the competition. The protester does not show, nor do we think, the information has prejudiced the protester in any way.